

STATE OF MINNESOTA
COUNTY OF RAMSEY

BEFORE THE MINNESOTA
BOARD OF OPTOMETRY

In the Matter of the
Proposed Permanent Rules
Relating to the Term and
Renewal of Licenses and
Recovery of the Costs of
Disciplinary Proceedings

STATEMENT OF NEED
AND REASONABLENESS

Pursuant to Minn. Stat. § 14.23 (1986) the Minnesota Board of Optometry hereby presents the need and reasonableness of proposed permanent rules relating to the term and renewal of licenses and the recovery of the costs of disciplinary proceedings. In order to adopt the proposed rule, the Board of Optometry must demonstrate that it has complied with all procedural and substantive requirements of rulemaking. Those requirements are: 1) there is statutory authority to adopt the rule; 2) the rule is needed; 3) the rule is reasonable. This demonstrates that the Board has met the necessary requirements.

STATUTORY AUTHORITY

Minnesota Statute section 148.53 authorizes the Board to make any rules and regulations and to do any and all things not inconsistent with the law which it may deem expedient for the full and efficient performance of their duties.

NEED AND REASONABLENESS OF RULE ALLOWING THE RECOVERY OF COSTS OF DISCIPLINARY PROCEEDINGS

The Board has reviewed the proceedings necessary to suspend or revoke a license or impose other disciplinary action when a licensee violates statutes or rules that the Board is empowered to enforce. Under the present disciplinary system, the Board is required to refer complaints to the Office of the Attorney General for investigation and either attempt to informally resolve complaints or proceed to contested case hearings when warranted. See Minn. Stat. § 214.10 (1986). Using this

system of suspension and revocation, substantial costs and legal fees are incurred by the Board.

The Board has reviewed its anticipated expenditures for the next biennium. With increases in costs, the suspension and revocation process under the present system could adversely affect the budget of this Board. Adoption of this part would substantially recover the cost of disciplinary proceedings. Therefore, there is need to adopt proposed part 6500.2900, subpart 3, to recover those costs.

The adoption of part 6500.2900, subpart 3, is also reasonable. The Board's expenses for all its functions are supported entirely by licensure fees. The disciplinary costs are thus borne by all licensees although only a very small number of licensees are the subject of disciplinary proceedings. Recovering the disciplinary costs from those licensees who are actually disciplined for violations of statutes and rules relieves ethical and competent licensees from bearing these extraordinary expenses. Such relief is reasonable.

NEED AND REASONABLENESS OF RULES RELATING TO TERMS AND RENEWALS OF LICENSES

The Board requires that each holder of a Minnesota license to practice optometry in the State of Minnesota annually renew their license by December 31. Each year an application for relicensure is sent to each licensee with an enclosed letter stating the requirements for relicensure. This information is sent at least 90 days prior to the annual renewal date of December 31. This 90 day notice provides the licensee time to submit all required information and fees. Therefore, it is reasonable to assume that all licensees would apply for relicensure no later than December 31. Should a licensee not meet the deadline, a penalty fee is imposed by the Board for late compliance.

For the last several years more than 100 licensees have failed to meet all requirements for relicensure prior to December 31 of each year. However, most licensees meet all requirements for renewal within 90 days after the date license renewal is due. Each year there are several licensees, usually all living outside the State of Minnesota, who fail to submit the necessary requirements for relicensure. The Board's director makes concerted effort by correspondence and telephone calls to the licensee requesting compliance with the requirements for relicensure. In some cases this effort fails and the Board is required to initiate a contested case hearing to suspend or revoke the optometrist's license and to incur substantial costs. Under the proposed rules, the licenses of licensees who fail to timely renew would automatically expire after notice and opportunity to respond to the notice.

Minnesota Rules pts. 6500.0900-6500.1700 require that within a three year period each Minnesota licensed optometrist take 45 hours of Board approved continuing education. The Board may require each licensee to attend a specific course of continuing education within the licensure year. This special course becomes a requirement for licensure for the following year. Since a minimum of 200 hours of continuing education is presented by various organizations within a calendar year, it is reasonable to assume that the licensee can meet the annual continuing education for relicensure as well as the 45 hours required within the three compliance period.

Proposed part 6500.2800 requires that the Board notify, after January 1, those licensees who have not met the continuing education requirement for relicensure. The licensee may notify the Board that he voluntarily wishes to terminate the license. If the licensee, after 30 days of receiving first notice, fails to pay the renewal fee plus penalty and supply the information applying to continuing education, it is only reasonable that the license shall expire and the right to practice optometry in the State of Minnesota shall terminate.

The Board recognizes that there may be a need occasionally to extend the license expiration date. Therefore, the licensee who has met all requirements other than the required continuing education may be granted an extension of six months beyond the date noticed by the Board. Should the licensee fail to meet the continuing education requirement due to illness or disability, the license expiration could be extended a second six-month period. This licensee must, by medical report, show evidence of illness or disability and request an extension of time to meet the required continuing education requirement for licensure.

When a license expires for noncompliance to Board requirements or is voluntarily terminated, the applicant may apply to the Board for reinstatement, pay all annual renewal fees and penalty fees, and complete the required continuing education within the educational cycle during the time the license was expired or terminated.

Should a license be suspended or revoked for a violation of Minn. Stat. §§ 148.52-148.62 or Minn. Rules pts. 6500.0400 to 6500.1700, it is reasonable to require that the applicant meet all requirements set forth in 6500.2900, subps. 2 and 3 before reinstatement. In addition, all reasonable stipulations must be met by the applicant before a license will be reissued by the Board.

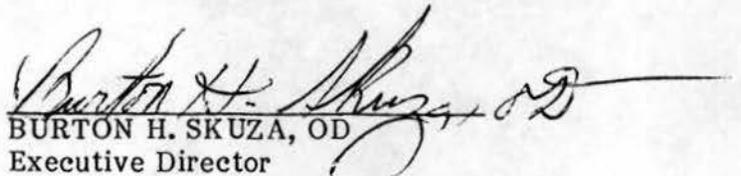
Proposed part 6500.2900, subparts 5 and 6 allow for certain exemptions from the continuing education requirements. Currently there are approximately 200 licensees residing outside the State of Minnesota and not providing optometric services to the public of this state. These licensees pay their annual license renewal fees. However, due to the difference of continuing education requirements between respective states, it is often difficult for this licensee to meet the continuing education requirements set forth by the Board. Since the licensee is not practicing in Minnesota, exemption from continuing education requirements poses no threat to the

public's safety. This licensee would be required to file an affidavit with the Board attesting to the fact that the licensee is not practicing optometry in the State of Minnesota and not providing services to the residents of this state. Other licensees are either retired or permanently disabled and not providing optometric services to the citizens of the State of Minnesota. These licensees can also apply for exemption from the continuing education requirement. However, should the exemption status change, and any licensee begin to practice in Minnesota, the Board must be notified and the licensee must comply with the continuing education requirements as set forth in 6500.2900, subpart 2.

The proposed rules are thus needed and reasonable. The provisions set forth in the rules assure the public that the skill and knowledge of the practitioner will be maintained.

Dated: May 21, 1987

STATE OF MINNESOTA
BOARD OF OPTOMETRY


BURTON H. SKUZA, OD
Executive Director